



ENVIRONMENTAL PROTECTION AGENCY

[FRL -9780-1]

Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Applicant of Adair, Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Regional Administrator of EPA Region 6 is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the Oklahoma Conservation Commission (“the applicant”) for the for 2,400 square yards of fiber (coir) woven mats to be installed as part of a stream channel restoration on eleven sites located in Adair and Cherokee Counties, Oklahoma for the CWSRF wastewater treatment plant project. The required fiber (coir) woven mat is manufactured by foreign manufacturers and no United States manufacturer produces an alternative that meets the Applicant’s technical specifications. This is a project specific waiver and only applies to the use of the specified product for the ARRA funded project being proposed. Any other ARRA project that may wish to use the same product must apply for a separate waiver based on the specific project circumstances. The Regional Administrator is making this determination based on the review and recommendations of the EPA Region 6, Water

Quality Protection Division. The Applicant has provided sufficient documentation to support its request.

The Assistant Administrator of the EPA's Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of the selected fiber (coir) woven mat is not manufactured in America, for the proposed project being implemented by the Applicant.

EFFECTIVE DATE: January 17, 2013 .

FOR FURTHER INFORMATION CONTACT: Nasim Jahan, Buy American Coordinator, (214) 665-7522, SRF & Projects Section, Water Quality Protection Division, U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

SUPPLEMENTARY INFORMATION:

In accordance with ARRA Section 1605(c) and 1605(b)(2), EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111-5, Buy American requirements, to the Applicant for the acquisition of selected made fiber (coir) woven mat. The Applicant has been unable to find American made fiber (coir) woven mat to meet its specific wastewater requirements.

Section 1605 of ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States unless a waiver is provided to the recipient by EPA. A waiver may be provided if EPA determines that: 1) applying these requirements would be inconsistent with public interest; 2) iron, steel, and the relevant manufactured goods are not produced

in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or 3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

The Applicant has requested a waiver for fiber (coir) woven mats to be installed as part of a stream channel restoration on eleven sites located in Adair and Cherokee Counties, Oklahoma. The applicant claims that the product required to meet project design and performance specification requirements is not manufactured in the United States.

Restoration of stream banks in the Illinois River Watershed within Adair and Cherokee counties of northeastern Oklahoma requires installation requires a fiber (coir) woven mat to stabilize soil and overcome the high shear stress found in a stream environment.

Additional key requirements of the project dictate a product that is 100 percent biodegradable and has a functional lifespan of two to three years. The project specification criteria are listed below:

Property	Specification
Weight (ASTM D 5263)	23 oz/SY
Tensile Strength Dry (ASTM D 4595)	
Machine Direction	1740 lbs/ft
Cross direction	1176 lbs/ft
Tensile Strength Wet (ASTM D 4595)	
Machine Direction	1488 lbs/ft
Cross direction	1032 lbs/ft
Open area	48%
Thickness (ASTM D 5199)	0.35 inch
Recommended slope	> 1:1
Recommended flow	12 fps

Recommended shear stress	4.5 lbs/ft ²
“C” factor	0.002
Roll Size	6.5’ x 164’
Functional Longevity	2 to 3 Yrs.

Based on additional research conducted by EPA Region 6 there do not appear to be any American-made fiber (coir) woven mat that would meet the Applicant’s technical specifications. EPA’s national contractor prepared a technical assessment report based on the waiver request submittal, which confirmed the waiver applicant’s claim that there is no American-made fiber (coir) woven mat available for use in the proposed waste water treatment system.

EPA has also evaluated the Applicant’s request to determine if its submission is considered late or if it could be considered timely, as per the OMB regulation at 2 CFR §176.120. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as “late” if submitted after the contract date. However, EPA could also determine that a request be evaluated as timely, though made after the date that the contract was signed, if the need for a waiver was not reasonably foreseeable. If the need for a waiver *is* reasonably foreseeable, then EPA could still apply discretion in these late cases as per the OMB Guidance, which says “the award official may deny the request.” For those waiver requests that do not have a reasonably unforeseeable basis for lateness, but for which the waiver basis is valid and there is no apparent gain by the ARRA recipient or loss on behalf of the government, then EPA will still consider granting a waiver.

In this case this “shovel ready” project experienced significant delays during the preliminary design. Originally, the Oklahoma Conservation Commission contracted with the Oklahoma Department of Wildlife Resources (ODWR) to evaluate potential sites and to perform preliminary design and cost estimates to assess feasibility of including sites in this project. The intent was to hire a design/build team to perform the work. The ODWR had two leading experts in stream restoration who were assigned to this project. Some months into the project, both experts left ODWR to employment elsewhere. After months of trying to replace them, ODWR were unable to execute the project.

Oklahoma Conservation Commission then contracted with Oklahoma State University to evaluate and select sites for the project. After months of work and careful coordination with Oklahoma Department of Environmental Quality and US Army Corps of Engineers, Oklahoma State University identified 12 sites that should be able to qualify for nationwide 404 permits and might reasonably be restored within the project budget.

The contract was awarded in Dec 2011 and site-specific design began in early 2012. Once designs were available and it was realized that coir fiber mats would be needed, Oklahoma Water Resources Board instructed the applicant to apply for a waiver request. EPA believes that the need for a waiver was not reasonably foreseeable and thus will treat the Applicant’s waiver request as if timely submitted.

The April 28, 2009, EPA HQ Memorandum, Implementation of Buy American provisions of P.L. 111-5, the “American Recovery and Reinvestment Act of

2009,” defines reasonably available quantity as “the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.” The Applicant has incorporated specific technical design requirements for installation of fiber (coir) woven mat at its wastewater treatment plant.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are “shovel ready” by requiring utilities, such as the Applicant, to revise their standards and specifications, institute a new bidding process, and potentially choose a more costly, less efficient project. The imposition of ARRA Buy American requirements on such projects otherwise eligible for State Revolving Fund assistance would result in unreasonable delay and thus displace the “shovel ready” status for this project. To further delay construction is in direct conflict with a fundamental economic purpose of the ARRA, which is to create or retain jobs.

The Region 6 Water Quality Protection Division has reviewed this waiver request, and has determined that the supporting documentation provided by the Applicant is sufficient to meet the criteria listed under ARRA, Section 1605(b), Office of Management and Budget (OMB) regulations at 2 CFR §§ 176.60 – 176.170, and in the April 28, 2009, memorandum, “Implementation of Buy American provisions of P.L. 111-5, the American Recovery and Reinvestment Act of 2009.” The basis for this project waiver is the authorization provided in ARRA, Section 1605(b)(2). Due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a

satisfactory quality in order to meet the Applicant's technical specifications, a waiver from the Buy American requirement is justified.

EPA headquarters' March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular goods required for this project, and that these manufactured goods are not available from a producer in the United States, the Applicant is hereby granted a waiver from the Buy American requirements of ARRA, Section 1605(a) of Public Law 111-5 for the purchase of the selected fiber (coir) woven mat, using ARRA funds, as specified in the Applicant's request. This supplementary information constitutes the detailed written justification required by ARRA, Section 1605(c), for waivers "based on a finding under subsection (b)."

Authority: P.L. 111-5, section 1605.

Date: January 17, 2013.

Ron Curry,

Regional Administrator

U.S. Environmental Protection Agency,

Region 6.

[FR Doc. 2013-03599 Filed 02/15/2013 at
8:45 am; Publication Date: 02/19/2013]